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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ALEJANDRO R. CALDERON,

Defendant and Appellant.

B300103

(Los Angeles County
Super. Ct. No. NA094774)

THE COURT:

In 2015, Alejandro R. Calderon was sentenced to serve 36 years in prison for assaulting police officers with a firearm, shooting at an occupied vehicle and conspiracy to commit crime. (Pen. Code, §§ 245, subd. (d)(2), 246, 182, subd. (a)(1), 12022.53.)¹ The court imposed a \$10,000 restitution fine, payable from prison earnings. (§ 1202.4, subd. (b).) The abstract of judgment incorrectly showed a restitution fine of \$300.

¹ Unlabeled statutory references are to the Penal Code.

We reviewed a direct appeal from the judgment in *People v. Calderon* (Nov. 22, 2016, B267196 [nonpub.opn.]). The prior appeal addressed the calculation of Calderon’s sentence; he did not challenge the restitution fine. We affirmed the judgment but directed the court to correct sentencing errors that did not affect the aggregate prison term.

A new abstract of judgment filed in March 2017 shows a term of 36 years; a restitution fine of \$10,000; a \$10,000 parole revocation fine, which was suspended; a court operations assessment of \$160; and a conviction assessment of \$120.

Calderon petitioned for a writ of habeas corpus in 2019. Citing *People v. Dueñas* (2019) 30 Cal.App.5th 1157, he asserted that his ability to pay the restitution fine was not proven at a hearing and he lacks the ability to pay while incarcerated. Attached to his petition is a Department of Corrections Inmate Statement Report showing an incorrect restitution fine of \$300 and a current balance of \$150. The trial court initially ruled that Calderon was entitled to a hearing on his ability to pay and appointed counsel to represent him.

On May 21, 2019, the court summarily denied the petition. The court wrote that Calderon was ordered to pay \$10,000 in victim restitution, plus \$70 in assessments. During his lengthy prison term “he has the ability to earn prison wages” to satisfy the fines and fees. If he has not paid the debt upon completion of his sentence, he can request a hearing on his ability to pay.

Calderon appealed the denial of his petition. We appointed counsel to represent him. After examining the record, counsel filed an opening brief raising no issues. (*People v. Wende* (1979) 25 Cal.3d 436, 441–443.) We advised Calderon that he could

personally submit any contentions or issues that he wished to raise on appeal.

In a supplemental brief, Calderon contends that no one is guaranteed a job in prison. He has not worked during five years of incarceration. He is on lockdown in a segregated unit, with no work privileges and no ability to pay \$10,000. He wonders how the court came up with such a large sum. He writes that his victims are police officers whose agency pays “for any harm or inconveniences they endure by their [sic] being on the job.” Though he fired a gun at them, they were uninjured. Calderon states that new laws are coming into play that may shorten his term; he might be released at a youth offender hearing. He does not want to face the negative impact of the fine upon release.

Calderon did not object to the restitution fine at trial or in his prior appeal, forfeiting the issue of its reasonableness. (*People v. Avila* (2009) 46 Cal.4th 680, 729; *People v. Torres* (2019) 39 Cal.App.5th 849, 860.) Inability to pay the fine “shall not be considered a compelling and extraordinary reason” for not imposing it. (§ 1202.4, subd. (c).) A defendant must prove inability to pay; “[a] separate hearing for the fine shall not be required.” (*Id.*, subd. (d); *People v. Frandsen* (2019) 33 Cal.App.5th 1126, 1154 [“it is incumbent on [defendant] to object to the fine and demonstrate why it should not be imposed.”].)

Calderon’s 36-year sentence and four felonies reach the maximum fine of \$10,000. (§ 1202.4, subd. (b)(1)–(2) [restitution is calculated by multiplying the minimum fine of \$300 by the years in the prison term, multiplied by the number of felonies].) Sentenced to prison for a lengthy term, he has the ability to earn prison wages over a sustained period. (*People v. Johnson* (2019) 35 Cal.App.5th 134, 139.) His situation is not comparable to that

of a misdemeanor placed on probation, as was the case in *People v. Dueñas, supra*, 30 Cal.App.5th 1157.) As described in our prior opinion, Calderon committed a very serious offense by firing 16 times at officers. (§ 1202.4, subd. (d) [court considers the seriousness and gravity of the offense when setting the fine].)

We have reviewed the entire record and are satisfied that no arguable issue exists. (*People v. Wende, supra*, 25 Cal.3d at pp. 441-443; *People v. Kelly* (2006) 40 Cal.4th 106, 125-126.) The order denying Calderon's petition is affirmed.

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LUI, P. J.

ASHMANN-GERST, J.

CHAVEZ, J.